

Ex. P

HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY - UNDER PROTECTIVE ORDER

1 U.S. DISTRICT COURT
2
3 NORTHERN DISTRICT OF CALIFORNIA
4
5 OAKLAND DIVISION

6 ELASTICSEARCH, INC., a) Volume 2
7 Delaware corporation,)
8 ELASTICSEARCH B.V., a)
9 Dutch corporation,)
10) Case No.
11 Plaintiffs,) 4:19-cv-05553-YGR
12)
13 vs.)
14)
15 Floragunn GmbH, a German)
16 corporation,)
17)
18 Defendant.)
19)
20 *** HIGHLY CONFIDENTIAL ***
21 *** UNDER PROTECTIVE ORDER ***
22 *** ATTORNEY'S EYES ONLY ***

23 REMOTE VIDEOTAPED DEPOSITION
24
25 OF

19 30(b) (6) CORPORATE REPRESENTATIVE

20 JOCHEN MICHAEL KRESSIN

21 Tuesday, March 9, 2021

22 Berlin, Germany

23
24
25 Reported by: B. Suzanne Hull, CSR No. 13495

1 APPEARANCES
2
3
4

5 For Plaintiffs: O'Melveny & Myers, LLP
6 By MR. DAVID R. EBERHART
7 MR. DANIEL LEIGH
8 Attorneys at Law
9 2 Embarcadero Center
10 Twenty-eighth Floor
11 San Francisco, California 94111
12 (415) 984-8700
13 deberhart@omm.com
14 dleigh@omm.com

15 For Defendant: Kwun Bhansali Lazarus, LLP
16 By MR. MICHAEL S. KWUN
17 Attorney at Law
18 555 Montgomery Street
19 Suite 750
20 San Francisco, California 94111
21 (415) 630-2350
22 mkwun@kblfirm.com

23 The Videographer: Jennifer Williams

24 The Interpreter: Kathi Stock

25 Also Present: Martin Walker

HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY - UNDER PROTECTIVE ORDER

1 A. I asked Mr. Saly if he decompiled any X-Pack 18:11:53
2 sources in order to get code into the Search Guard 18:11:59
3 code base. 18:12:02
4 Q. And what did Mr. Saly tell you? 18:12:03
5 A. Mr. Saly told me that he cannot remember -- 18:12:07
6 no. Sorry. That is not what he told me. He told me 18:12:12
7 that he hasn't decompiled any Elasticsearch -- no. 18:12:15
8 Any -- any X-Pack code in order to get to some 18:12:19
9 information that leads to any Search Guard code. 18:12:24
10 Q. Did you ever ask -- 18:12:31
11 A. Can I correct my statement because it was -- 18:12:35
12 it was not 100 percent correct. 18:12:38
13 So Mr. Saly told me that he did not 18:12:39
14 decompile X-Pack object code. That is actually what 18:12:43
15 he told me. 18:12:47
16 Q. Did Mr. Saly ever tell you whether or not he 18:12:48
17 decompiled Shield object code? 18:12:51
18 A. Well, when we use the phrase X-Pack, 18:12:54
19 sometimes it also includes Shield because it is the 18:13:01
20 predecessor product of -- of -- of X-Pack, but no. 18:13:06
21 Mr. Saly said that he has not decompiled Shield 18:13:10
22 object code for any creation of Search Guard, no. 18:13:16
23 Q. Isn't it a fact that Mr. Saly told you that 18:13:20
24 he couldn't remember whether he had decompiled any 18:13:24
25 Shield object code? 18:13:28

HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY - UNDER PROTECTIVE ORDER

1 A. Well, I don't -- I don't remember the exact 18:13:40
2 words that Mr. Saly used; so he couldn't remember if 18:13:42
3 he did; so in my opinion sitting here and today, 18:13:46
4 I think I remember that we talked about that, and 18:13:49
5 there was no decompilation process going on. 18:13:52

6 Q. Well, that was your conclusion from the 18:13:55
7 conversation. 18:13:58

8 But the words Mr. Saly used were that he 18:13:58
9 couldn't remember decompiling Shield binaries; 18:14:04
10 correct? 18:14:07

11 A. Well, again, sitting here and today, I don't 18:14:08
12 know if these were the exact words of Mr. Saly, but 18:14:13
13 it could -- could be that he used those words. 18:14:16

14 Q. Other than talking to Mr. Saly about 18:14:20
15 decompilation, did you do anything else to determine 18:14:26
16 whether the person who had committed the code in 18:14:30
17 paragraph thirty-eight had reviewed the code in 18:14:34
18 paragraph thirty-nine of Exhibit 174? 18:14:38

19 A. Well, in my opinion, the only way to review 18:14:42
20 that code would be by decompiling it and by asking 18:14:51
21 the question if a decompilation process was going on. 18:14:56
22 In my opinion, that includes the -- the review part; 18:15:00
23 so if one didn't decompile, one couldn't review the 18:15:04
24 code. 18:15:09

25 MR. EBERHART: Could you read back the 18:15:11

HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY - UNDER PROTECTIVE ORDER

1	question, please.	18:15:14
2	(Requested portion of record read.)	18:15:15
3	THE WITNESS: I did not ask this specific	18:15:33
4	question if the person reviewed the code that is --	18:15:35
5	that is mentioned here. I asked a broader question	18:15:39
6	if there was decompilation or not -- or not.	18:15:42
7	BY MR. EBERHART:	18:15:46
8	Q. Is Mr. Saly the person who committed the	18:15:50
9	code in paragraph thirty-eight of Exhibit 174?	18:15:54
10	A. Yes.	18:15:58
11	Q. Other than asking the broader question about	18:15:58
12	decompilation, did you ask Mr. Saly any other	18:16:12
13	questions -- withdrawn.	18:16:18
14	Other than asking the broad question about	18:16:20
15	decompilation to Mr. Saly, did you do anything else	18:16:23
16	to determine whether he had reviewed the code in	18:16:26
17	Exhibit 39 before committing the code in Exhibit 38	18:16:26
18	[sic]?	18:16:34
19	A. Apart from asking him the question if he had	18:16:34
20	reviewed the code, there was nothing more that I did	18:16:37
21	to determine that because, in my opinion, it is -- it	18:16:45
22	is not -- not possible without decompiling code.	18:16:49
23	Q. Taking a look at exhibit -- or sorry.	18:16:54
24	Paragraph forty-one, please.	18:16:59
25	A. Yes.	18:17:08

HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY - UNDER PROTECTIVE ORDER

1 Your code is open, but Elastic's code is also open; 19:48:44
2 so so what? 19:48:49
3 Q. You go on -- as part of that paragraph you 19:48:50
4 wrote: 19:48:55
5 "We will know which features they are 19:48:56
6 working on currently, how certain things are 19:49:00
7 implemented concept wise, and where they plan 19:49:02
8 to take X-Pack next." 19:49:05
9 Correct? 19:49:06
10 A. Correct. 19:49:07
11 Q. And you wrote that because you meant that 19:49:08
12 floragunn would be able to review the X-Pack code to 19:49:10
13 determine the answers to those questions; correct? 19:49:14
14 A. No. 19:49:19
15 I basically meant that with the opening of 19:49:19
16 the -- of the X-Pack code, it was not just opening 19:49:22
17 the X-Pack code. But also mentioned in the -- in the 19:49:26
18 blog post, I think in that one -- or in one of the 19:49:32
19 blog posts -- sorry -- regarding opening the X-Pack 19:49:34
20 code there was also the statement that opening the 19:49:38
21 X-Pack code would lead to developing new features in 19:49:41
22 the public rather than -- well, how do you call it? 19:49:47
23 In private. And that refers mainly to the GitHub 19:49:56
24 issues that were connected, a part of the X-Pack -- 19:50:00
25 I'm sorry. Of -- of the now-combined repository 19:50:09

HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY - UNDER PROTECTIVE ORDER

1	containing the -- sorry. The Apache 2 license and	19:50:12
2	the X-Pack code.	19:50:16
3	So what I meant with that phrase or that	19:50:17
4	sentence is that it is not only opening the actual	19:50:20
5	code. It is also opening the issues on GitHub.	19:50:25
6	Those have also been made available.	19:50:31
7	Q. And you write:	19:50:34
8	"For example, we would have noticed	19:50:41
9	early on they were working on SAML."	19:50:44
10	Correct?	19:50:46
11	A. Correct.	19:50:47
12	Q. And what is SAML?	19:50:47
13	A. SAML is a -- it is an authentication	19:50:49
14	standard and -- authentication and authorization	19:50:57
15	standard that is based on XML. And it is used mainly	19:51:00
16	for implementing single sign-on. And it is an	19:51:08
17	industry standard.	19:51:17
18	Q. And by that sentence you meant that had the	19:51:17
19	X-Pack code been open, floragunn would have noticed	19:51:21
20	early on that Elastic was working on SAML; correct?	19:51:24
21	MR. KWUN: Objection. Misstates prior	19:51:28
22	testimony.	19:51:30
23	THE WITNESS: So I was -- I was referring to	19:51:32
24	if the issues on GitHub are now open, there would	19:51:35
25	have been and -- most probably there would have been	19:51:39

HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY - UNDER PROTECTIVE ORDER

1 an issue or ticket, or whatever one wants to call it, 19:51:43
2 talking about SAML implementation. 19:51:47

3 And the reason why I am referring explicitly 19:51:50
4 to SAML in that particular case is that we have been 19:51:54
5 working on SAML support for quite -- quite some time. 19:51:57
6 And then at the -- at one of the -- the Elasticons 19:52:03
7 that I -- that I attended, they said that the next 19:52:09
8 version of X-Pack -- I don't remember which exact 19:52:14
9 version that was, but it was before the X-Pack code 19:52:19
10 was made open -- will also contain SAML support; so 19:52:22
11 we were working on it. And at the same time it -- by 19:52:27
12 that -- by that statement at the Elasticon, it seemed 19:52:32
13 to me that Elastic was working on that -- on that as 19:52:35
14 well. 19:52:38

15 And while we thought that it would be -- it 19:52:40
16 would be kind of helpful for us, you know, to bring 19:52:43
17 out a fresh new feature to -- to Search Guard, it 19:52:47
18 was, to me, well, interesting to hear that this will, 19:52:51
19 you know, already come in one of the next versions of 19:52:57
20 X-Pack. 19:53:00

21 MR. EBERHART: Why don't we take a short 19:53:19
22 break. 19:53:22

23 MR. KWUN: Sounds good. 19:53:22

24 THE VIDEOGRAPHER: We're going off the 19:53:25
25 record. 19:53:26

1 STATE OF CALIFORNIA)

) ss.

2 COUNTY OF KERN)

3

4

5 I, B. Suzanne Hull, a Certified Shorthand
6 Reporter in the State of California, holding
7 Certificate Number 13495, do hereby certify that
8 JOCHEN MICHAEL KRESSIN, the witness named in the
9 foregoing deposition, was by me duly sworn; that said
10 deposition, was taken Tuesday, March 9, 2021, at the
11 time and place set forth on the first page hereof.

12 That upon the taking of the deposition, the
13 words of the witness were written down by me in
14 stenotypy and thereafter transcribed by computer
15 under my supervision; that the foregoing is a true
16 and correct transcript of the testimony given by the
17 witness.

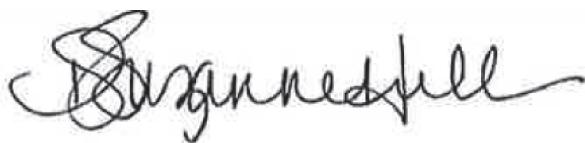
18 Pursuant to Federal Rule 30(e), transcript
19 review was requested.

20 I further certify that I am neither counsel
21 for nor in any way related to any party to said
22 action, nor in any way interested in the result or
23 outcome thereof.

24 ///

25 ///

1 Dated this 13th day of March, 2021, at
2 Bakersfield, California.

3
4 

5 B. Suzanne Hull, CSR No. 13495
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25